The trial court held that W. Devereux Langhorne's share of the trust estate should be distributed to Allen F. Langhorne and Beverly L. Kirill and that James Aubrey Langhorne, the adopted child, should be excluded from sharing in the distribution. In the adopted child's Memorandum of Authorities filed in the trial court on behalf of James Aubrey Langhorne it was asserted that an adopted child had the right and privilege to take as "issue" under a will and that to deprive him of this right was to deny him rights and privileges guaranteed to him by the equal protection clause of the 14th Amendment.

In the notice of appeal and assignments of error filed in the Corporation Court it was asserted that that Court had erred in excluding James Aubrey Langhorne from testator's will, in that such a denial deprived him of rights guaranteed him by the equal protection clause of the 14th Amendment. Further, this federal right was again specifically claimed in the petition for appeal and briefs submitted to the Supreme Court of Virginia in behalf of the petitioner.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Virginia's decision arbitrarily discriminates between natural and adopted children and denies the adoptive child the equal protection of the laws.

Quite clearly adopted children are "persons" and therefore come within the meaning of the Fourteenth Amendment. The question now is whether the adopted child, James Aubrey Langhorne, has been denied "the equal protection of the laws" by the Commonwealth of Virginia.

It is the petitioner's contention that the Supreme Court of Virginia has, by defining "issue" to exclude

adopted children, denied him "the equal protection of the laws" guaranteed him by the Fourteenth Amendment. The Virginia Court in its opinion plainly stated that Testator's will ". . . gives no indication of whether or not the Testator wished to include descendants through adoption. . . ." Yet the Court stated the rule to be that:

> "A Testator does not intend by the word 'issue' . . . to include persons who qualify as such only by or through adoption. . . ."

In other words, the Virginia Court has defined the word "issue" to mean only natural issue or issue of the body. Such a definition discriminates against adopted children.

Of course, all discrimination does not violate the mandate of the 14th Amendment. Ordinarily the inquiry under the 14th Amendment is whether there is some reasonable basis for discrimination by the state action and whether the lines drawn are rational ones or whether the discrimination is invidious. See *Morey* v. *Doud*, 354 U.S. 457, 77 S. Ct. 1344 (1957); *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 75 S. Ct. 461 (1955); *Yick Wo* v. *Hopkins*, 118 U.S. 356, 6 S. Ct. 1064 (1886). No reasonable basis for the discrimination between adopted children and natural children appears from the Virginia Court's opinion. In fact, no reason is given by the Court indicating why the neutral word "issue" includes natural children but excludes those adopted.

To discriminate between adopted children and natural children within the same familial unit is to draw an irrational, unreasonable and unnatural line. For the Virginia Court to make such a distinction based solely

on the word "issue" amounts to invidious discrimination in that it places children of the same family in separate classes for no valid reason. The Court has advanced no compelling state interest justifying the denial of an adopted child his fundamental right to be treated equally with a natural child.

The language of Virginia's adoption statutes in no way supports the Court's decision. In fact, Section 63.1-233 of the Code of Virginia which provides:

> ". . . Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order . . . be, to all intents and purposes, the child of the person or persons so adopting him. . . ."

and Section 63.1-234 which provides that:

> "For the purpose of descent and distribution, a legally adopted child shall inherit, according to the statutes of descent and distribution, from and through the parents by adoption from the time of entry of an interlocutory order or the final order if there is no interlocutory order and shall not inherit from the natural parents. . . ."

strongly command that adopted children and natural children are to be treated equally.

This Court in the recent case of *Levy* v. *Louisiana*, 391 U.S. 68, 71; 88 S.Ct. 1509, 1511 (1968), held that to deny illegitimate children the right to recover for the wrongful death of their mother constituted invidious discrimination against them. In so holding the Court stated:

> "Why should the illegitimate child be denied rights merely because of his birth out of wedlock?

> He certainly is subject to all the responsibilities of a citizen, including the payment of taxes and conscription under the Selective Service Act. How under our regime can he be denied correlative rights which other citizens enjoy?"

Levy v. *Louisiana, supra,* is very similar to the case at bar and the reasoning there applies equally to petitioner's situation. Why should an adopted child be denied the right of inheritance as "issue" merely because he is not the natural child of the adoptive parents? He is equal to the natural child for all other intents and purposes.

The rights asserted in *Levy, supra,* involved the intimate, familial relationship between a child and his own mother. The rights asserted here by the petitioner involve the same intimate, familial relationship between an adopted child and his natural brothers and sisters. The adopted child is in no way responsible for his birth and should not be discriminated against merely because he is not a natural born child. It would be a gross injustice to legally disadvantage a child on the basis of factors over which he had absolutely no control.

In *Hirabayashi* v. *United States,* 320 U.S. 81, 100; 63 S. Ct. 1375, 1385 (1943), this Court stated that:

> "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

To legally distinguish between adopted children and natural children living in the same household with the same parents solely on the basis of their birth would go far in disrupting the most basic, necessary and socially desirable unit of our society—the family.

The primary mandate of the equal protection clause is that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and in the liabilities imposed. See *Hartford Steam Boiler Tire & Ins. Co.* v. *Harrison,* 301 U.S. 459; 57 S. Ct. 838 (1937). Children of the same family unit and household should be treated alike whether they are adopted or natural. All adopted children are entitled to the same equal protection of the laws as their natural brother and sisters. When the right of inheritance is denied them by an arbitrary definition of the word "issue", the basic notion of equality is destroyed.

In *Skinner* v. *Oklahoma,* 62 S. Ct. 1110, 1113; 316 U.S. 535, 541 (1942), this Court said that:

> ". . . When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as an invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment."

In the instant case the Supreme Court of Virginia has laid the unequal hand of the law on the adopted child, James Aubrey Langhorne, and decreed that he is not to be treated equally with his natural brother and sister; that he is to be deprived of his rightful inheritance because of an arbitrary definition of the word "issue"; and that in the eyes of the law he is really not a child for all intents and purposes but a child whose status lies somewhat below that of a natural child.

CONCLUSION

For these reasons a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Virginia.

Respectfully submitted,

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